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SEP 10 2010

In re Application of
Igor E. BONDAREV et al
Application No. 10/586,434
Filed: September 9, 2008
Attorney Docket No. 04-40018-US1

OFFICE OF PETITIONS

ON PETITION

This is in response to the "Petition under 37 CFR 1.47(a), filed August 25, 2010.

The petition is **DISMISSED**.

The Office of Finance records indicate that no petition fee has been received. Authorization to charge the fee set forth in 37 CFR 1.17(g) to deposit account 12-0555 has been given in the Petition. The Office will charge the Deposit Account in the amount of \$200.00 for the requisite fee.

Rule 47 applicant is given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include papers executed by the non-signing inventor. Any extensions of time will be governed by 37 CFR 1.136(a).

Petitioner request the acceptance of a Revocation of Power of Attorney and new Power of Attorney under 37 CFR 1.47(a) on the grounds that reasonable and diligent efforts have been made to contact the non-signing inventor, John S. Bertram. In support of the request a declaration has been submitted by Ann Park indicating that letters have been sent to the last known address, and no response has been received.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicant lacks item (1) set forth above. Specifically, the declaration submitted by Ann Park does not establish unavailability of the non-signing inventor. Evidence of no response to the letters sent to the non-signing inventor, requesting that the non-signing inventor contact Ann Park, would not establish reasonable and diligent efforts to show the unavailability of John S. Bertram.

Petitioner has not demonstrated that all efforts were expended in trying to locate inventor John S. Bertram. In this regard, petitioner should, at the very least, conduct a search of the regional or national registry(s). The results of such search should be made in any future petition for reconsideration. *See* MPEP 409.03(d). Additionally, petitioner should state whether he has access to inventor John S. Bertram's personnel records and, if so, what does inspection of the records reveal as to a current address, forwarding address, or an address of the nearest living relative? What does inspection of the phone directories for those address locations reveal? Further, the petition fails to indicate that correspondence was ever mailed unsuccessfully to the inventor's last known address. Therefore, at the very least, petitioner should mail correspondence to the inventor's last known address, return receipt and/or forwarding address requested. If a forwarding address is provided, petitioner should then mail a complete copy of the application papers requiring signature to Mr. John S. Bertram's address, return receipt requested, along with a cover letter of instructions which includes a deadline or a statement that no response will constitute a refusal. This sort of ultimatum lends support to a finding of refusal by conduct. If the papers are returned and all other attempts to locate or reach the inventor, e.g., through personnel records, co-workers, E-mail, the Internet or the telephone, etc., continue to fail, then applicant will have established that the inventor cannot be reached after diligent effort or has refused to join in the application. **The statements of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein and should be accompanied by documentary evidence in support of the statement of facts.** It is important that the forthcoming communication contain statements of fact as opposed to conclusions.

Where there is an express or oral refusal, that fact, along with the time and place of the refusal, must be stated in an affidavit or declaration by the party to whom the refusal was made. Where there is a written refusal, a copy of the document(s) evidencing that refusal must be made part of the affidavit or declaration.

When it is concluded by the rule 47 applicant that an omitted inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in an affidavit or declaration. If there is documentary evidence to support facts alleged in the affidavit or declaration, such evidence must be submitted.

Whenever an omitted inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration.


Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By Hand: U. S. Patent and Trademark Office
Customer Window, Mail Stop PETITIONS
401 Dulany Street
Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries should be directed to the undersigned at (571) 272-0602.


Thurman K. Page
Petitions Examiner
Office of Petition

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